

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

| | | |
|---|---|------------------------------|
| Jeremy Shay Sweat, # 326997, |) | Case No. 2:19-cv-307-JMC-MGB |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Brian Sterling, Director; Michael McCall, |) | ORDER |
| Deputy Director; Aaron Joyner, Warden; |) | |
| Rudy Tisdale, Associate Warden; |) | |
| Mr. Blackwell, Nurse Practitioner; |) | |
| and Ms. Cappadonia, Head Nurse, |) | |
| |) | |
| Defendants. |) | |
| |) | |

This is a civil action under 42 U.S.C. § 1983 filed by a state prisoner representing himself. Under Local Civil Rule 73.02(B)(2)(e) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

PREPAYMENT OF THE FILING FEE:

Plaintiff has asked to proceed without prepayment of the filing fee by filing an Application to Proceed Without Prepayment of Fees. Plaintiff has demonstrated an inability to prepay the entire filing fee. (Plaintiff has paid \$20.10 thus far.) Thus, his request to proceed *in forma pauperis* (Dkt. No. 2) is **granted**.

NOTICE OF LEAVE TO AMEND COMPLAINT:

The Court is required to screen prisoner complaints seeking redress from governmental entities, officers, or employees. *See* 28 U.S.C. § 1915A. The Court must dismiss any complaints, or portions of complaints, that are frivolous or malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. § 1915A(b). Those same criteria are grounds for dismissing a case filed by someone proceeding *in forma pauperis*. 28 U.S.C. § 1915(e)(2)(B).

Plaintiff is suing the South Carolina Department of Corrections under § 1983. (Dkt. No. 1 at 2, 3.) However, § 1983 allows people to sue only “person[s]” who harm someone’s federal rights while acting “under color of” state law. § 1983. The Department is not a “person” under § 1983, so it cannot be sued. *E.g., Brooks v. S.C. Dep’t of Corr.*, No. 6:18-cv-632-MBS-KFM, 2018 WL 2470746, at *2 (D.S.C. Apr. 20, 2018), *report and recommendation adopted*, 2018 WL 2461897 (D.S.C. June 1, 2018); *Harrison v. S.C. Dep’t of Corr.*, No. 8:14-cv-1196-JMC-JDA,

2014 WL 10060932, at *2 (D.S.C. July 8, 2014), *report and recommendation adopted*, 2015 WL 4095882 (D.S.C. July 6, 2015). Because the only defendant Plaintiff has named cannot be sued under § 1983, the complaint is subject to summary dismissal.

However, Plaintiff could, in theory, cure such defects by amending his factual allegations. Although it is not the Court's role to resolve pleading deficiencies prior to dismissal, *see Abdul-Mumit v. Alexandria Hyundai, LLC*, 896 F.3d 278, 292 (4th Cir. 2018), the Fourth Circuit Court of Appeals has instructed that *pro se* plaintiffs generally should get an opportunity to file an amended complaint in order to correct factual pleading deficiencies, *see Goode v. Cent. Va. Legal Aid Soc'y*, 807 F.3d 619 (4th Cir. 2015). In other words, if amendment could cure the complaint's defects, then the plaintiff should have a chance to amend. Here, there is a possibility that Plaintiff could cure the defects. Accordingly, Plaintiff is **granted leave** to file an amended complaint by **March 8, 2019**. **The Clerk of Court is directed to send the Plaintiff a pre-printed complaint form.**

If Plaintiff files an amended complaint, it will completely replace the original complaint. *See Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001) ("As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect."). Therefore, if Plaintiff files an amended complaint, it should contain all of the claims he wishes to assert, as well as a plain short statement of the supporting facts for those claims.

If Plaintiff files an amended complaint, the undersigned will screen it under § 1915A and § 1915(e)(2)(B). If Plaintiff does not file an amended complaint, the undersigned will recommend that the complaint be dismissed.

TO THE PLAINTIFF:

The Court cannot authorize the issuance and service of process at this time. You have not submitted any properly completed service documents. Under General Order *In Re: Procedures in Civil Actions Filed by Prisoner Pro Se Litigants*, No. 3:07-mc-5014-JFA (D.S.C. Sept. 18, 2007), the undersigned is giving you **twenty-one days from the date this Order is entered, plus three days for mail time**, to do the following:

- 1) **Complete one summons form for each defendant named in this case, and return the forms to the Clerk of Court.** In the space following "TO: (Defendant's name and address)," you must provide a complete name and a full address where defendant can be served under Federal Rule of Civil Procedure 4. You must provide your complete name and full address in the blank section following "plaintiff or plaintiff's attorney, whose name and address are." Handwritten information must be printed and legible. Do not write anything else on either the front or back of the summons or in the margins. **Three blank summons forms are enclosed for your use.**
- 2) **Return one Form USM-285 for each Defendant named in this case.** Only one defendant's name and **street** address should appear on each form. The defendant's

name and street address should be placed in the spaces preceded by the words, "SERVE AT." Your name and address should be placed in the space designated, "SEND NOTICE OF SERVICE COPY TO . . .," and you must sign where the form requests, "Signature of Attorney or other Originator" You must provide the defendant's **complete street address** on the form (**not a post office box address**). You must provide, and are responsible for, information sufficient to identify defendants on the Forms USM-285. The United States Marshal cannot serve an inadequately identified defendant, and unserved defendants may be dismissed as parties to this case. **Three blank Form USM-285s are enclosed for your use.**

No process shall issue until the items specified above have been reviewed by the assigned Magistrate Judge.

If you do not complete the above tasks within the time permitted under this Order, this case may be dismissed for failure to prosecute and to comply with an order of this Court under Rule 41 of the Federal Rules of Civil Procedure.

You must place the civil action number listed above (No. 2:19-cv-307-JMC-MGB) on any document you submit to this Court. **Any future filings in this case must be sent to the Clerk of Court, Post Office Box 835, Charleston, South Carolina 29402.** All documents requiring your signature shall be signed with your full legal name written in your own handwriting. You may *not* use the "s/typed name" format used in the Electronic Case Filing system. In all future filings with this Court, you must use letter-sized (8½ inches by 11 inches) paper only, write or type text on only one side of a sheet of paper, and not write or type on both sides of any sheet of paper. You must not write to the edge of the paper, but must instead maintain one-inch margins on the top, bottom, and sides of each paper submitted.

Your attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised in writing (Post Office Box 835, Charleston, South Carolina 29402) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this Order, you fail to meet a deadline set by this Court, **your case may be dismissed for violating this Order.** Therefore, if you have a change of address before this case is ended, you must comply with this Order by immediately advising the Clerk of Court in writing of such change of address and providing the Court with the docket number of all pending cases you have filed with this Court. **Your failure to do so will not be excused by the Court.**

TO THE CLERK OF COURT:

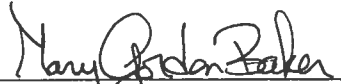
The Clerk shall mail a copy of this Order and the above-mentioned forms to Plaintiff. If Plaintiff fails to provide any item listed above within the period prescribed in this Order, the Clerk shall forward the file to the assigned United States District Judge to determine if this case should

be dismissed. *See In Re: Procedures in Civil Actions Filed by Prisoner Pro Se Litigants*, 3:07-mc-5014-JFA (D.S.C. Sept. 18, 2007). If, however, Plaintiff provides this Court the items listed above, the Clerk should forward the file to the undersigned to determine if service should be authorized.

The Clerk of Court shall not enter any change of address submitted by the Plaintiff which directs that mail be sent to a person other than Plaintiff unless that person is an attorney admitted to practice before this Court who has entered a formal appearance in this civil action.

IT IS SO ORDERED.

February 15, 2019
Charleston, South Carolina



MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

Plaintiff's attention is directed to the important information on the following page:

IMPORTANT INFORMATION—PLEASE READ CAREFULLY

WARNING TO PRO SE PARTY OR NONPARTY FILERS

ALL DOCUMENTS THAT YOU FILE WITH THE COURT WILL BE AVAILABLE TO THE PUBLIC ON THE INTERNET THROUGH PACER (PUBLIC ACCESS TO COURT ELECTRONIC RECORDS) AND THE COURT'S ELECTRONIC CASE FILING SYSTEM. **CERTAIN *PERSONAL IDENTIFYING INFORMATION* SHOULD NOT BE INCLUDED IN, OR SHOULD BE REMOVED FROM, ALL DOCUMENTS BEFORE YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2 of the Federal Rules of Civil Procedure provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to **ALL** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be "**blacked out**" or **redacted** prior to submitting the document to the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

1. Personal information protected by Rule 5.2(a):
 - (a) **Social Security and Taxpayer identification numbers.** If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.
 - (b) **Names of Minor Children.** If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.
 - (c) **Dates of Birth.** If an individual's date of birth must be included in a document, the filer may include only the year of birth.
 - (d) **Financial Account Numbers.** If financial account numbers are relevant, the filer may include only the last four digits of these numbers.
2. Protection of other sensitive personal information—such as driver's license numbers and alien registration numbers—may be sought under Rule 5.2(d) (filings made under seal) and (e) (protective orders).

MIME-Version:1.0
From:SCDEfilingstat@scd.uscourts.gov
To:scd_ecf_nef@localhost.localdomain
Bcc:
--Case Participants: Magistrate Judge Mary Gordon Baker (baker_ecf@scd.uscourts.gov),
Honorable J Michelle Childs (childs_ecf@scd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:<8894913@scd.uscourts.gov>
Subject:Activity in Case 2:19-cv-00307-JMC-MGB Sweat v. South Carolina Department of
Corrections Order on Motion for Leave to Proceed in forma pauperis
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 2/15/2019 at 2:36 PM EST and filed on 2/15/2019

Case Name: Sweat v. South Carolina Department of Corrections

Case Number: 2:19-cv-00307-JMC-MGB

Filer:

Document Number: 8(No document attached)

Docket Text:

REFERENCE ORDER granting [2] Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Mary Gordon Baker on 02/15/2019. (hada,)

2:19-cv-00307-JMC-MGB Notice has been electronically mailed to:

2:19-cv-00307-JMC-MGB Notice will not be electronically mailed to:

Jeremy Shay Sweat
326997
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=2/15/2019] [FileNumber=8894909-0
] [1c7bb864a0835b8d7388b382e061dbf900ee13ea8b655dbd7d5c3d65179ab0fdc0c
546cb5d3986794eef366541260e8b749f20606dfe779da959e92e76a31f81]]

MIME-Version:1.0
From:SCDEfilingstat@scd.uscourts.gov
To:scd_ecf_nef@localhost.localdomain
Bcc:
--Case Participants: Magistrate Judge Mary Gordon Baker (baker_ecf@scd.uscourts.gov),
Honorable J Michelle Childs (childs_ecf@scd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:<8894911@scd.uscourts.gov>
Subject:Activity in Case 2:19-cv-00307-JMC-MGB Sweat v. South Carolina Department of
Corrections Proper Form Order
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

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Case Name: Sweat v. South Carolina Department of Corrections

Case Number: 2:19-cv-00307-JMC-MGB

Filer:

Document Number: 7

Docket Text:

PROPER FORM ORDER Case to be brought into proper form by 3/8/2019. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. Signed by Magistrate Judge Mary Gordon Baker on 02/15/2019. (hada,)

2:19-cv-00307-JMC-MGB Notice has been electronically mailed to:

2:19-cv-00307-JMC-MGB Notice will not be electronically mailed to:

Jeremy Shay Sweat
326997
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

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McCormick, SC 29899